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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO RODERICK STEVENS et al.,

Defendants and Appellants.

B289414

(Los Angeles County  
Super. Ct. No. KA114646)

APPEAL from judgments of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant Mario Roderick Stevens.

Edward H. Schulman, under appointment by the Court of Appeal, for Defendant and Appellant Tracey Michelle Sims.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven E. Mercer, Acting Supervising Deputy Attorney General, John Yang, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Mario Stevens (defendant Stevens) and one of the prostitutes he was pimping, defendant Tracey Sims (defendant Sims), were jointly tried and convicted on charges of human trafficking for their conduct in pimping and/or pandering two underage girls. When defendant Stevens's trial attorney became ill and required hospitalization just before closing argument, the trial court continued the proceedings for two weeks until the attorney was able to return and argue the case. We consider whether the court should have granted a mistrial rather than delaying the end of trial to permit defense counsel to recuperate. Additionally, defendant Stevens asks us to review the trial court's denial of his *Romero*<sup>1</sup> motion at sentencing and defendant Sims advances an argument she concedes is foreclosed by binding Supreme Court precedent.

## I. BACKGROUND

### A. *The Offense Conduct As Established by the Evidence at Trial*

One of the trafficking victims, Vyronica, was 17 years old and had been working as a prostitute for over a year by January 2017. She had arrived in Fresno after running away from a group home in Orange County, and she did not have a pimp at the time. When Vyronica was sitting at a bus stop, defendant Stevens drove by, told her he was a pimp, and asked if she wanted to work for him. Defendant Stevens gave Vyronica his

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

phone number, and after she “took some time to think it over,” she called him and agreed.

The second trafficking victim, Tyleah, was 15 years old in January 2017. She testified she was working as a prostitute in Fresno when defendant Sims, who was also working, approached her. Defendant Sims asked Tyleah if she had a pimp; when Tyleah said no, defendant Sims asked if she wanted to come back to her motel room to get out of the rain. Tyleah understood that, by going with defendant Sims, she would be working for defendant Sims’s pimp (i.e., defendant Stevens). When Tyleah and defendant Sims arrived at the motel room, they were joined by defendant Stevens and Vyronica. Tyleah did not know Vyronica, but Tyleah recognized defendant Stevens because he previously approached her and asked her to work for him.

Defendants, Vyronica, and Tyleah lived together in the Fresno motel room for about a week. Vyronica and Tyleah gave their prostitution earnings directly to defendant Stevens and, when he was not immediately available, hid the money in the motel room as instructed by defendant Sims. Defendant Stevens set the prices the girls charged for different sex acts and provided condoms. After leaving Fresno, the group spent several weeks traveling between Southern California cities with bus tickets purchased by defendant Stevens, ultimately stopping at a motel in Claremont.

Defendant Sims, who continued to work as a prostitute, told Vyronica and Tyleah where and how to solicit customers, advised Tyleah on how to avoid being arrested, and helped Tyleah create online “escort ads.” Tyleah understood defendant Sims was defendant Stevens’s head prostitute of sorts, a role in which she was expected to “make more money than the

rest . . . [and] help the other girls be more successful.”

Over time, tensions between Vyronica and defendants developed. In late February 2017, defendant Stevens told Vyronica she was “fired,” hit her, and broke her phone after learning she contacted her father and asked him (Vyronica’s father) to contact law enforcement. Vyronica subsequently called the police herself and reported defendants had been pimping her and Tyleah. Police responded and arrested defendants at a motel.

### *B. Trial, Verdicts, and Sentencing*

In addition to the human trafficking charges (one count for each of the two victims, charged against both defendants), the information filed by the prosecution charged both defendants with dissuading a witness from reporting a crime, charged defendant Stevens with assaulting Vyronica with a deadly weapon (a razor blade), and charged defendant Sims with making criminal threats.

The charges were tried to a jury, and the presentation of evidence consumed five court days. As we discuss in greater detail *post*, defendant Stevens’s trial counsel became ill at the close of evidence, the trial court denied motions for mistrial, and the parties presented their closing arguments 13 court days later—upon counsel for defendant Stevens’s return.

The jury convicted both defendants on both charged counts of human trafficking of a minor for a commercial sex act.<sup>2</sup> (Pen.

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<sup>2</sup> Section 236.1, subdivision (c) prohibits a person from causing, inducing, persuading, or attempting to cause, induce, or persuade a minor to engage in a commercial sex act with the intent to effect or maintain a violation of enumerated sex crimes;

Code,<sup>3</sup> § 236.1, subd. (c)(1).) The jury found not true an associated allegation that defendant Stevens inflicted great bodily injury upon Vyronica. Both defendants were also convicted of the witness dissuading charge. (§ 136.1, subd. (b)(2).) Defendant Stevens was found not guilty of assault with a deadly weapon but convicted of the lesser included offense of simple assault. Defendant Sims was found not guilty of making criminal threats. (§ 422, subd. (a).)

With regard to sentencing, defendant Stevens admitted sustaining a prior strike conviction for robbery as a juvenile and he admitted serving a prior prison term within the meaning of section 667.5, subdivision (b). Defendant Stevens filed a *Romero* motion asking the trial court to exercise its discretion to strike the prior robbery conviction because he was only 17 years old when he committed the robbery, he had committed only drug offenses in the nearly 30 years since, and he did not use force to compel Vyronica and Tyleah to work for him.

The trial court denied the *Romero* motion, emphasizing defendant Stevens's continuing criminal history. The court stated defendant Stevens "served 18 years in state prison[ ] and it didn't shake [his] criminal activity one iota . . . . [b]ecause . . . five months later, . . . [he was] sentenced to 16 months in state prison after serving 18 years." The court observed defendant Stevens was released from custody in 2016

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here, the prosecution alleged defendants intended to "effect and/or maintain a violation of Penal Code section 266h [pimping] and 266i [pandering]."

<sup>3</sup> Undesignated statutory references that follow are to the Penal Code.

and “[o]ne year later . . . engaged in this case.” The trial court further reasoned that even though defendant Stevens was “not mean or cruel [to Vyronica and Tyleah] based on the testimony” there was still evidence he “prey[ed] on those two young ladies.” The trial court remarked it thought “there’s no parent in here that wouldn’t ask for the death penalty if someone did that to their child, notwithstanding that the child may have been incorrigible.”

Having denied defendant Stevens’s *Romero* motion, the trial court sentenced him to 34 years and 4 months in prison composed as follows: 12 years for the first human trafficking conviction, doubled based on the prior strike conviction; two years and eight months for the second human trafficking conviction, also doubled and to be served consecutively; two years for the witness dissuading count, to be served consecutively; 180 days for simple assault, to be served concurrently; plus five years under section 667.5, subdivision (a)(1) for sustaining a prior serious felony conviction.<sup>4</sup> The court sentenced defendant Sims to eight years in prison.

## II. DISCUSSION

Nothing in the appellate record substantiates defendant Stevens’s contention that his trial counsel’s illness impacted her performance before or during closing argument. Nor is there any basis to conclude that he was prejudiced by the continuance granted to allow his attorney to recuperate. Under these

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<sup>4</sup> The trial court struck defendant Stevens’s prior prison term alleged under section 667.5, subdivision (b).

circumstances, denying the defense motions for mistrial was not an abuse of discretion.

The trial court was also within its discretion to deny defendant Stevens's *Romero* motion. Although many years passed between his juvenile robbery conviction and this case, defendant Stevens spent the majority of those years incarcerated for other crimes. With that history, and in light of the seriousness of the crimes for which defendant Stevens was convicted in this case, the trial court reasonably concluded he remained within the spirit of the Three Strikes law.

Defendant Sims's sole argument on appeal, which defendant Stevens purports to join (contra *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363; *People v. Nero* (2010) 181 Cal.App.4th 504, 510, fn. 11), is that the trial court should not have instructed the jury they could convict her of human trafficking based on a pandering theory. We shall reject the argument as foreclosed by California Supreme Court precedent. (*People v. Zambia* (2011) 51 Cal.4th 965 (*Zambia*).)

A. *Defendant Stevens's Attorney's Illness Did Not Necessitate a Mistrial*

1. *Additional background*

During her cross-examination of the final witness to testify at trial (an expert called by defendant Sims), defendant Stevens's trial counsel noted her voice was "deteriorating." She completed her examination, however, without any problem otherwise revealed by the trial transcript.

Later that same day, after both sides rested, the trial court conferred with counsel. Based on the prosecution's estimate that it would need an hour for its closing argument, the trial court

decided to “have [the jury] come back tomorrow and [the prosecution] begin fresh tomorrow.” The court added, “plus, I think we need to give [defendant Stevens’s attorney’s] voice a rest.”

After the jury was excused, the trial court directed defense counsel to mark the prosecution trial exhibits to which they objected. The trial court acknowledged defendant Stevens’s attorney did not “feel well,” but said she could “do that tomorrow while other folks are arguing.” Defendant Stevens’s trial counsel, however, preferred to deal with the objections that day, so the parties resolved all the objections before adjourning.

Defendant Stevens’s trial counsel was not present in court when the case was called the next day, Thursday, January 4, 2018. Defendant Sims’s attorney requested a mistrial on behalf of defendant Stevens and urged the court to allow defendant Sims to proceed alone through the end of trial. The trial court said it was “not prepared to do that yet,” explaining: “Yesterday [defendant Stevens’s attorney] was barely able to speak. Apparently, she has some sort of bronchitis or some sort of flu-type ailment. She came in this morning and informed the court that she was feeling very bad; that she was extremely—not only had the symptoms that she displayed yesterday, but additionally some chest pains, and her husband was here with her. I excused her to seek medical attention immediately.”

Believing under the circumstances that continuing the trial just one day “would be an exercise in futility”, the trial court asked the jury to return the following Monday, January 8. Defendant Stevens personally inquired as to whether the court would declare a mistrial if his lawyer were too sick to appear at



that time. The trial court responded it would “cross that bridge on Monday.”

Defendant Stevens’s attorney was not in court on Monday. (Another lawyer from her office appeared on defendant Stevens’s behalf.) The trial court explained defendant Stevens’s trial counsel “was admitted into the hospital” and “her condition [was] somewhat serious, but [she] appears to be progressing as far as we know.” Both defendant Sims and defendant Stevens asked the court to declare a mistrial, but the court instead ruled it would continue the proceedings to Monday, January 22, 2018, with the understanding that, if defendant Stevens’s counsel was not available by that date, “we should throw in the towel.”

The attorney who represented defendant Stevens throughout trial returned to court on January 22. The trial court noted she was “still not feeling 100 percent, but she’s here, and we thank her for that.” The parties presented their closing arguments and the case was submitted to the jury.

## 2. *Analysis*

A mistrial motion should be granted only if the movant’s chances of receiving a fair trial have been irreparably damaged. (*People v. Ayala* (2000) 23 Cal.4th 225, 282.) In reviewing the trial court’s ruling on a motion for mistrial, we apply the abuse of discretion standard. (*People v. Gonzales* (2011) 51 Cal.4th 894, 921.) This standard is appropriate because the issue of “[w]hether a particular incident is incurably prejudicial is by its nature a speculative matter . . . . [Citation.]’ [Citation.]” (*People v. Collins* (2010) 49 Cal.4th 175, 198.) Defendant Stevens contends he did not receive a fair trial because his trial counsel’s illness impacted her performance and because the delay between

the close of evidence and argument was prejudicial in its own right.

An effective closing argument is essential to the Sixth Amendment guarantee of assistance of counsel. (*People v. Manson* (1976) 61 Cal.App.3d 102, 198.) From what the record before us reveals, defendant Stevens’s attorney was an effective advocate when she returned from her absence, even if the trial court was correct to state she was still not feeling “100 percent” at that time. By calculation from the trial transcript, her closing argument was more than double the length of the argument delivered by defendant Sims’s attorney and it included specific recollection of, and points of emphasis on, the testimony given by various witnesses during trial. While the duration of argument and its incorporation of a detailed review of the evidence are not necessarily the hallmarks of effectiveness, results are—and in that respect, defendant Stevens’s attorney did achieve some success in a case that does not strike us as a close one in many ways: the jury was apparently persuaded by trial counsel’s argument that defendant Stevens did not cut Vyronica with a razor, which resulted in a not guilty verdict on the assault with a deadly weapon charge (and a conviction instead on the far less serious offense of simple assault).<sup>5</sup>

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<sup>5</sup> In her closing argument, defendant Stevens’s attorney suggested photos of the scab allegedly resulting from a razor cut contained odd “breaks” inconsistent with a razor wound. She pointed out that despite the number of photos documenting condoms and other evidence recovered from defendants, there were no photos of a razor. She also noted that a police officer who interviewed Vyronica did not mention the razor cut in his report. Perhaps most significantly, she reminded the jury of Tyleah’s testimony concerning the alleged razor incident: “Tyleah didn’t

Defendant Stevens nevertheless asserts his trial attorney's performance fell short because she should have objected, "as co-counsel actively and repeatedly [did], during the Government's summation." Defendant Stevens does not, however, identify any particular objection counsel should have made but did not. Moreover, the decision of whether to object, particularly during closing argument, is a tactical decision that requires a risk-benefit analysis; counsel may have appropriately calculated that no objection should be made to avoid drawing further attention to the prosecution's remarks. Furthermore, the disparity in the number of objections made by the attorneys for both defendants is not surprising because, insofar as defendant Sims's relationship to Vyronica and Tyleah was more ambiguous than that of defendant Stevens, the prosecution was more aggressive in its arguments concerning defendant Sims.

From our review of the record and what we have said thus far, it should be obvious that defendant Stevens's comparisons of his trial counsel's condition to that of a sleeping attorney (*Javor v. United States* (9th Cir. 1984) 724 F.2d 831, 834), an intoxicated attorney (*State v. Keller* (N.D. 1929) 223 N.W. 698, 699-700), and an unprepared out-of-state attorney (*Powell v. Alabama* (1932) 287 U.S. 45, 58) are unwarranted and unpersuasive. The appellate record simply does not permit an inference that defendant Stevens's attorney was ineffective during closing argument as a result of the two-week delay in completing trial.

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even know. And she said, 'Vyronica and I were close.' . . . I asked her, 'If she had been cut with a razor by [defendant Stevens], would she have told you?' She said, 'Yeah.' She was never told that. That didn't happen."

Relatedly, we see nothing that indicates the delay between the close of evidence and closing arguments gave the prosecution an unfair advantage. Defendant Stevens assumes that, “unlike co-counsel and the prosecution, [defendant Stevens’s] counsel did not have this time [to] prepare for argument.” It was reasonable, however, for the trial court to conclude both that defendant Stevens’s lawyer needed little if any additional time for preparation (her illness required her absence immediately before closing argument, when much of her preparation would have necessarily been done) and that the two-week continuance in any event allowed sufficient time for recovery and any necessary further preparation.<sup>6</sup>

Nor is there any basis to worry defendant Stevens was prejudiced by the delay’s effect on the jury. In some cases, lengthy continuances increase the risk of jurors forgetting evidence or discussing the case with others. (See, e.g., *People v. Santamaria* (1991) 229 Cal.App.3d 269, 277-283 (*Santamaria*) [11-day adjournment during deliberations, where trial court could have transferred case to a substitute judge in judge’s

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<sup>6</sup> Defendant Stevens suggests he was particularly disadvantaged by his trial counsel’s inability to confer with him during this period. He cites *Geders v. United States* (1976) 425 U.S. 80 (*Geders*), in which the high court held a trial court’s order prohibiting a criminal defendant from conferring with his attorney during an overnight recess in the middle of his testimony “impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment.” (*Geders, supra*, at p. 91.) Here, by contrast, there was no order preventing trial counsel from communicating with defendant Stevens during her absence and the appellate record does not establish there was a need for such communication that went unmet.

absence, required reversal]; *United States v. Hay* (9th Cir. 1997) 122 F.3d 1233, 1235-1236 [presuming prejudice in case involving “complex, technical evidence against two defendants over a period of nearly four months” after “unprecedented” recess of “a month and a half” before closing arguments].) Here, though, there is no indication any juror was exposed to outside influence and several factors mitigated any risk the jurors’ recollection of the evidence may have dimmed. The evidence presented over five days of trial was neither voluminous nor complex, and the fact that the parties gave their summations *after* the continuance ensured the facts were fresh in the jurors’ minds when they began deliberations. (*Santamaria, supra*, at p. 282 [“Had the adjournment occurred in midtrial, counsels’ recapitulation of the evidence during argument might have nullified or minimized the effect of the delay on the jurors’ recall”].) Furthermore, the jury alerted the court when it felt it might have some question as to the exhibits in evidence and trial testimony, and the trial court ensured the jury had the testimony and evidence properly in mind.<sup>7</sup>

We hasten to add, in conclusion, that trial court was not irrationally determined to submit this case to the jury at any cost. It told the jury it would likely “throw in the towel” if defendant Stevens’s trial counsel was not well after two weeks,

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<sup>7</sup> The jury requested playback of Vyronica’s 911 call, which the court granted. The jury also requested “the transcript of testimony given by Tyleah in regards to the death threat [to Vyronica] in the Motel 6 room.” When, after conferring with counsel, the trial court told the jurors Tyleah gave “no testimony as to that,” the foreperson replied, “Okay. That’s what we thought.”

and we have no reason to doubt this was true. Taking into account the duration of the continuance, the complexity of the case, and the stage of the proceedings at which defendant Stevens’s counsel became ill, the trial court did not abuse its discretion in denying the request for a mistrial. (See, e.g., *People v. Erno* (1925) 195 Cal. 272, 282-283 [no error where nothing in the appellate record demonstrated granting 10-day continuance during trial resulted in detriment to the defendant, who had the burden to show prejudice].)

*B. The Trial Court Was Within Its Discretion to Deny Defendant Stevens’s Romero Motion*

*1. Guiding principles and standard of review*

California’s Three Strikes law was passed “to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious and/or violent felony offenses.” (*People v. Sasser* (2015) 61 Cal.4th 1, 11.) “In *Romero*, [our Supreme Court] held that a trial court may strike or vacate an allegation or finding under the Three Strikes law that a defendant has previously been convicted of a serious and/or violent felony, on its own motion, “in furtherance of justice” pursuant to . . . section 1385(a).’ [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).)

When confronted with the question of whether a prior conviction should be stricken pursuant to *Romero*, a trial court must consider whether the defendant falls outside the “spirit” of the Three Strikes sentencing scheme by looking to the nature and circumstances of the present offense of conviction; the nature and circumstances of prior serious or violent felony convictions; and

the particulars of the defendant's background, character, and prospects. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The overall sentence to be imposed "is also a relevant consideration . . . [,] in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences." (*People v. Garcia* (1999) 20 Cal.4th 490, 500 (*Garcia*).)

The Three Strikes law "creates a strong presumption that any sentence that conforms to [its] sentencing norms is both rational and proper." (*Carmony, supra*, 33 Cal.4th at p. 378; see also *People v. Myers* (1999) 69 Cal.App.4th 305, 310 ["Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance"].) We review for abuse of discretion a trial court's decision not to strike a prior felony conviction allegation under section 1385. (*Carmony, supra*, at p. 374.) Our Supreme Court has cautioned that "[b]ecause the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Id.* at p. 378.)

## *2. There was no abuse of discretion*

The record demonstrates the trial court in this case balanced the relevant facts to reach an impartial decision, one

that had the effect of doubling the sentence for certain of defendant Stevens's convictions.

As to the nature and circumstances of the offense conduct here, the trial court said defendant Stevens's conduct toward the girls was "not mean or cruel" (perhaps relative to all that was possible when human trafficking is involved) but emphasized his exploitation of minors was "despicable."<sup>8</sup> That, of course, is a fair assessment of the evidence, but defendant Stevens contends the trial court improperly "stressed its own personal feelings about human trafficking in the abstract" when it remarked, "I think there's no parent in here that wouldn't ask for the death penalty if someone did that to their child, notwithstanding that the child may have been incorrigible." The court's musing about how a parent might feel, though blunt, was not an adoption by the court itself of that view. Rather, it was a permissible rebuttal (albeit with some rhetorical excess) of the idea that a stiff sentence was unwarranted because the victims were runaways or did not escape defendant Stevens when they had the opportunity. (See *People v. Guerra* (2006) 37 Cal.4th 1067, 1111 ["Mere expressions of opinion by a trial judge based on actual observation of the witnesses and evidence in the courtroom do not demonstrate a bias"], overruled on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Defendant Stevens further contends the trial court did not give due consideration to the nature and circumstances of his

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<sup>8</sup> Defendant Stevens claims the evidence shows he "dismiss[ed] [Vyronica] when he found out that she was a minor." But there was also evidence defendant Stevens knew Tyleah was a minor when she worked for him, so the reasons for "firing" Vyronica have little mitigating value.



juvenile strike offense, his difficult childhood, and the absence of a conviction for a violent crime in the years since the prior juvenile strike offense. The trial court, however, was not insensitive to the remoteness of defendant Stevens's robbery conviction: "It appears that that robbery he committed when he was . . . . either 16 or 17 years old. . . . And had that been his only conviction, I think that [trial counsel's arguments in support of the *Romero* motion] would have a lot of force and effect." The trial court did emphasize, on the other hand, that defendant Stevens had spent the majority of the intervening years in prison for significant drug offenses and promptly returned to crime upon his release from custody: "In 1997, [defendant Stevens] was sentenced to 22 years in the state prison . . . . [¶] [He] served 18 years in state prison, and it didn't shake [his] criminal activity one iota . . . . Because June 19, 2015, five months [after his release], . . . [he was] arrested, and then [he was] sentenced to 16 months in state prison after serving 18 years. [He was] released . . . on January 13, 2016, . . . . [and] one year later [he was] engaged in this case. Nothing that has occurred since [his] 1989 [robbery] conviction has deterred [him from] further criminal conduct . . . ."

It was within the trial court's discretion to conclude the time that elapsed between defendant Stevens's strike offenses did not take him outside the spirit of the Three Strikes law because the gap appears largely to be the result of lengthy intervening prison terms. "In determining whether a prior conviction is remote, the trial court should not simply consult the Gregorian calendar with blinders on. To be sure, a prior conviction may be stricken if it is remote in time. In criminal law parlance, this is sometimes referred to as 'washing out.' [Citations.] The phrase

is apt because it carries the connotation of a crime-free cleansing period of rehabilitation after a defendant has had the opportunity to reflect upon the error of his or her ways. Where, [however], the defendant has led a continuous life of crime after the prior, there has been no ‘washing out’ . . . .” (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.) Here, the trial court reasonably concluded the fact that defendant Stevens did not sustain any convictions for inherently violent crimes while in and out of prison on narcotics charges did not “wash out” his 1989 robbery. The ultimate imposition of a 34 year and 4 month sentence on these facts was not an abuse of the court’s section 1385 discretion. (*Garcia, supra*, 20 Cal.4th at p. 500.)

*C. Controlling Authority Dooms the Sole Argument  
Made by Defendant Sims*

Defendant Sims’s sole argument on appeal is that her human trafficking conviction may improperly rest on a pandering theory. Defendant Sims specifically contends that because the pandering statute, section 266i, is limited to encouraging another person “to become” a prostitute, it does not apply in this case because Vyronica and Tyleah were already working as prostitutes when they met defendants. Our Supreme Court held directly to the contrary in *Zambia, supra*, 51 Cal.4th 965 at page 981: “[W]e conclude that the proscribed activity of encouraging someone ‘to become a prostitute,’ as set forth in section 266i, subdivision (a)(2), includes encouragement of someone who is already an active prostitute, or undercover police officer.” *Zambia’s* holding is binding in this court and we reject defendant Sims’s argument accordingly.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.